

PROTECTIVE ORDER REVISIONS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Dixon M. Pitcher

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the definition of abuse that is used for a child protective order.

Highlighted Provisions:

This bill:

- ▶ amends the definition of "abuse" that is used for a child protective order; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78A-6-105, as last amended by Laws of Utah 2016, Chapters 109 and 351

78B-7-201, as renumbered and amended by Laws of Utah 2008, Chapter 3

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **78A-6-105** is amended to read:

78A-6-105. Definitions.

As used in this chapter:

(1) (a) "Abuse" means:



- 28 (i) nonaccidental harm of a child;
- 29 (ii) threatened harm of a child;
- 30 (iii) sexual exploitation;
- 31 (iv) sexual abuse; or
- 32 (v) human trafficking of a child in violation of Section 76-5-308.5.
- 33 (b) that a child's natural parent:
 - 34 (i) intentionally, knowingly, or recklessly causes the death of another parent of the
 - 35 child;
 - 36 (ii) is identified by a law enforcement agency as the primary suspect in an investigation
 - 37 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or
 - 38 (iii) is being prosecuted for or has been convicted of intentionally, knowingly, or
 - 39 recklessly causing the death of another parent of the child.
- 40 (c) "Abuse" does not include:
 - 41 (i) reasonable discipline or management of a child, including withholding privileges;
 - 42 (ii) conduct described in Section 76-2-401; or
 - 43 (iii) the use of reasonable and necessary physical restraint or force on a child:
 - 44 (A) in self-defense;
 - 45 (B) in defense of others;
 - 46 (C) to protect the child; or
 - 47 (D) to remove a weapon in the possession of a child for any of the reasons described in
 - 48 Subsections (1)(b)(iii)(A) through (C).
- 49 (2) "Abused child" means a child who has been subjected to abuse.
- 50 (3) "Adjudication" means a finding by the court, incorporated in a decree, that the facts
- 51 alleged in the petition have been proved. A finding of not competent to proceed pursuant to
- 52 Section 78A-6-1302 is not an adjudication.
- 53 (4) "Adult" means [~~a person~~] an individual 18 years of age or over, except that [~~a~~
- 54 ~~person~~] an individual 18 years or over under the continuing jurisdiction of the juvenile court
- 55 pursuant to Section 78A-6-120 shall be referred to as a minor.
- 56 (5) "Board" means the Board of Juvenile Court Judges.
- 57 (6) "Child" means [~~a person~~] an individual under 18 years of age.
- 58 (7) "Child placement agency" means:

59 (a) a private agency licensed to receive a child for placement or adoption under this
60 code; or

61 (b) a private agency that receives a child for placement or adoption in another state,
62 which agency is licensed or approved where such license or approval is required by law.

63 (8) "Clandestine laboratory operation" means the same as that term is defined in
64 Section 58-37d-3.

65 (9) "Commit" means, unless specified otherwise:

66 (a) with respect to a child, to transfer legal custody; and

67 (b) with respect to a minor who is at least 18 years of age, to transfer custody.

68 (10) "Court" means the juvenile court.

69 (11) "Dependent child" includes a child who is homeless or without proper care
70 through no fault of the child's parent, guardian, or custodian.

71 (12) "Deprivation of custody" means transfer of legal custody by the court from a
72 parent or the parents or a previous legal custodian to another person, agency, or institution.

73 (13) "Detention" means home detention and secure detention as defined in Section
74 62A-7-101 for the temporary care of a minor who requires secure custody in a physically
75 restricting facility:

76 (a) pending court disposition or transfer to another jurisdiction; or

77 (b) while under the continuing jurisdiction of the court.

78 (14) "Division" means the Division of Child and Family Services.

79 (15) "Formal referral" means a written report from a peace officer or other person
80 informing the court that a minor is or appears to be within the court's jurisdiction and that a
81 petition may be filed.

82 (16) "Group rehabilitation therapy" means psychological and social counseling of one
83 or more ~~persons~~ individuals in the group, depending upon the recommendation of the
84 therapist.

85 (17) "Guardianship of the person" includes the authority to consent to:

86 (a) marriage;

87 (b) enlistment in the armed forces;

88 (c) major medical, surgical, or psychiatric treatment; or

89 (d) legal custody, if legal custody is not vested in another person, agency, or institution.

90 (18) "Habitual truant" means the same as that term is defined in Section 53A-11-101.

91 (19) "Harm" means:

92 (a) physical or developmental injury or damage;

93 (b) emotional damage that results in a serious impairment in the child's growth,

94 development, behavior, or psychological functioning;

95 (c) sexual abuse; or

96 (d) sexual exploitation.

97 (20) (a) "Incest" means engaging in sexual intercourse with a person whom the
98 perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt,
99 nephew, niece, or first cousin.

100 (b) The relationships described in Subsection (20)(a) include:

101 (i) blood relationships of the whole or half blood, without regard to legitimacy;

102 (ii) relationships of parent and child by adoption; and

103 (iii) relationships of stepparent and stepchild while the marriage creating the

104 relationship of a stepparent and stepchild exists.

105 (21) "Intellectual disability" means:

106 (a) significantly subaverage intellectual functioning, an IQ of approximately 70 or
107 below on an individually administered IQ test, for infants, a clinical judgment of significantly
108 subaverage intellectual functioning;

109 (b) concurrent deficits or impairments in present adaptive functioning, the person's
110 effectiveness in meeting the standards expected for his or her age by the person's cultural
111 group, in at least two of the following areas: communication, self-care, home living,
112 social/interpersonal skills, use of community resources, self-direction, functional academic
113 skills, work, leisure, health, and safety; and

114 (c) the onset is before the ~~[person]~~ individual reaches the age of 18 years.

115 (22) "Legal custody" means a relationship embodying the following rights and duties:

116 (a) the right to physical custody of the minor;

117 (b) the right and duty to protect, train, and discipline the minor;

118 (c) the duty to provide the minor with food, clothing, shelter, education, and ordinary
119 medical care;

120 (d) the right to determine where and with whom the minor shall live; and

- 121 (e) the right, in an emergency, to authorize surgery or other extraordinary care.
- 122 (23) "Mental disorder" means a serious emotional and mental disturbance that severely
123 limits a minor's development and welfare over a significant period of time.
- 124 (24) "Minor" means:
- 125 (a) a child; or
- 126 (b) [~~a person~~] an individual who is:
- 127 (i) at least 18 years of age and younger than 21 years of age; and
- 128 (ii) under the jurisdiction of the juvenile court.
- 129 (25) "Molestation" means that [~~a person~~] an individual, with the intent to arouse or
130 gratify the sexual desire of any [~~person~~] individual:
- 131 (a) touches the anus or any part of the genitals of a child;
- 132 (b) takes indecent liberties with a child; or
- 133 (c) causes a child to take indecent liberties with the perpetrator or another.
- 134 (26) "Natural parent" means a minor's biological or adoptive parent, and includes the
135 minor's noncustodial parent.
- 136 (27) (a) "Neglect" means action or inaction causing:
- 137 (i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe
138 Relinquishment of a Newborn Child;
- 139 (ii) lack of proper parental care of a child by reason of the fault or habits of the parent,
140 guardian, or custodian;
- 141 (iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary
142 subsistence, education, or medical care, or any other care necessary for the child's health,
143 safety, morals, or well-being; or
- 144 (iv) a child to be at risk of being neglected or abused because another child in the same
145 home is neglected or abused.
- 146 (b) The aspect of neglect relating to education, described in Subsection (27)(a)(iii),
147 means that, after receiving a notice of compulsory education violation under Section
148 [53A-11-101.5](#), or notice that a parent or guardian has failed to cooperate with school
149 authorities in a reasonable manner as required under Subsection [53A-11-101.7\(5\)\(a\)](#), the parent
150 or guardian fails to make a good faith effort to ensure that the child receives an appropriate
151 education.

152 (c) A parent or guardian legitimately practicing religious beliefs and who, for that
153 reason, does not provide specified medical treatment for a child, is not guilty of neglect.

154 (d) (i) Notwithstanding Subsection (27)(a), a health care decision made for a child by
155 the child's parent or guardian does not constitute neglect unless the state or other party to the
156 proceeding shows, by clear and convincing evidence, that the health care decision is not
157 reasonable and informed.

158 (ii) Nothing in Subsection (27)(d)(i) may prohibit a parent or guardian from exercising
159 the right to obtain a second health care opinion and from pursuing care and treatment pursuant
160 to the second health care opinion, as described in Section [78A-6-301.5](#).

161 (28) "Neglected child" means a child who has been subjected to neglect.

162 (29) "Nonjudicial adjustment" means closure of the case by the assigned probation
163 officer without judicial determination upon the consent in writing of:

164 (a) the assigned probation officer; and

165 (b) (i) the minor; or

166 (ii) the minor and the minor's parent, legal guardian, or custodian.

167 (30) "Not competent to proceed" means that a minor, due to a mental disorder,
168 intellectual disability, or related condition as defined, lacks the ability to:

169 (a) understand the nature of the proceedings against [~~them~~] the minor or of the
170 potential disposition for the offense charged; or

171 (b) consult with counsel and participate in the proceedings against [~~them~~] the minor
172 with a reasonable degree of rational understanding.

173 (31) "Physical abuse" means abuse that results in physical injury or damage to a child.

174 (32) "Probation" means a legal status created by court order following an adjudication
175 on the ground of a violation of law or under Section [78A-6-103](#), whereby the minor is
176 permitted to remain in the minor's home under prescribed conditions and under supervision by
177 the probation department or other agency designated by the court, subject to return to the court
178 for violation of any of the conditions prescribed.

179 (33) "Protective supervision" means a legal status created by court order following an
180 adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to
181 remain in the minor's home, and supervision and assistance to correct the abuse, neglect, or
182 dependency is provided by the probation department or other agency designated by the court.

183 (34) "Related condition" means a condition closely related to intellectual disability in
184 accordance with 42 C.F.R. Part 435.1010 and further defined in Rule R539-1-3, Utah
185 Administrative Code.

186 (35) (a) "Residual parental rights and duties" means those rights and duties remaining
187 with the parent after legal custody or guardianship, or both, have been vested in another person
188 [~~or agency~~], including:

- 189 (i) the responsibility for support;
- 190 (ii) the right to consent to adoption;
- 191 (iii) the right to determine the child's religious affiliation; and
- 192 (iv) the right to reasonable parent-time unless restricted by the court.

193 (b) If no guardian has been appointed, "residual parental rights and duties" also include
194 the right to consent to:

- 195 (i) marriage;
- 196 (ii) enlistment; and
- 197 (iii) major medical, surgical, or psychiatric treatment.

198 (36) "Secure facility" means any facility operated by or under contract with the
199 Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for
200 youth offenders committed to the division for custody and rehabilitation.

201 (37) "Severe abuse" means abuse that causes or threatens to cause serious harm to a
202 child.

203 (38) "Severe neglect" means neglect that causes or threatens to cause serious harm to a
204 child.

205 (39) "Sexual abuse" means:

206 (a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation by an
207 adult directed towards a child;

208 (b) an act or attempted act of sexual intercourse, sodomy, incest, or molestation
209 committed by a child towards another child if:

- 210 (i) there is an indication of force or coercion;
- 211 (ii) the children are related, as defined in Subsections (20)(a) and (20)(b);
- 212 (iii) there have been repeated incidents of sexual contact between the two children,
213 unless the children are 14 years of age or older; or

214 (iv) there is a disparity in chronological age of four or more years between the two
215 children; or

216 (c) engaging in any conduct with a child that would constitute an offense under any of
217 the following, regardless of whether the ~~[person]~~ individual who engages in the conduct is
218 actually charged with, or convicted of, the offense:

219 (i) Title 76, Chapter 5, Part 4, Sexual Offenses, except for Section 76-5-401, if the
220 alleged perpetrator of an offense described in Section 76-5-401 is a minor;

221 (ii) child bigamy, Section 76-7-101.5;

222 (iii) incest, Section 76-7-102;

223 (iv) lewdness, Section 76-9-702;

224 (v) sexual battery, Section 76-9-702.1;

225 (vi) lewdness involving a child, Section 76-9-702.5; or

226 (vii) voyeurism, Section 76-9-702.7.

227 (40) "Sexual exploitation" means knowingly:

228 (a) employing, using, persuading, inducing, enticing, or coercing any child to:

229 (i) pose in the nude for the purpose of sexual arousal of any ~~[person]~~ individual; or

230 (ii) engage in any sexual or simulated sexual conduct for the purpose of photographing,
231 filming, recording, or displaying in any way the sexual or simulated sexual conduct;

232 (b) displaying, distributing, possessing for the purpose of distribution, or selling
233 material depicting a child:

234 (i) in the nude, for the purpose of sexual arousal of any ~~[person]~~ individual; or

235 (ii) engaging in sexual or simulated sexual conduct; or

236 (c) engaging in any conduct that would constitute an offense under Section 76-5b-201,
237 sexual exploitation of a minor, regardless of whether the person who engages in the conduct is
238 actually charged with, or convicted of, the offense.

239 (41) "Shelter" means the temporary care of a child in a physically unrestricted facility
240 pending court disposition or transfer to another jurisdiction.

241 (42) "State supervision" means a disposition that provides a more intensive level of
242 intervention than standard probation but is less intensive or restrictive than a community
243 placement with the Division of Juvenile Justice Services.

244 (43) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or

245 substances.

246 (44) "Substantiated" means the same as that term is defined in Section [62A-4a-101](#).

247 (45) "Supported" means the same as that term is defined in Section [62A-4a-101](#).

248 (46) "Termination of parental rights" means the permanent elimination of all parental
249 rights and duties, including residual parental rights and duties, by court order.

250 (47) "Therapist" means:

251 (a) ~~[a person]~~ an individual employed by a state division or agency for the purpose of
252 conducting psychological treatment and counseling of a minor in ~~[its]~~ the division's or agency's
253 custody; or

254 (b) any other person licensed or approved by the state for the purpose of conducting
255 psychological treatment and counseling.

256 (48) "Unsubstantiated" means the same as that term is defined in Section [62A-4a-101](#).

257 (49) "Without merit" means the same as that term is defined in Section [62A-4a-101](#).

258 Section 2. Section **78B-7-201** is amended to read:

259 **78B-7-201. Definitions.**

260 As used in this chapter:

261 (1) (a) "Abuse" means ~~[physical abuse or sexual abuse:]~~:

262 (i) nonaccidental harm of a child;

263 (ii) threatened harm of a child;

264 (iii) sexual exploitation;

265 (iv) sexual abuse; or

266 (v) human trafficking of a child in violation of Section [76-5-308.5](#).

267 (b) "Abuse" does not include:

268 (i) reasonable discipline or management of a child, including withholding privileges;

269 (ii) conduct described in Section [76-2-401](#); or

270 (iii) the use of reasonable and necessary physical restraint or force on a child:

271 (A) in self-defense;

272 (B) in defense of others;

273 (C) to protect the child; or

274 (D) to remove a weapon in the possession of a child for any of the reasons described in

275 Subsections (1)(b)(iii)(A) through (C).

276 (2) "Court" means ~~[the]~~ a district court or juvenile court.

277 (3) All other terms ~~[have the same meaning as]~~ mean the same as those terms are
278 defined in Section [78A-6-105](#).

Legislative Review Note
Office of Legislative Research and General Counsel